

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY



(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 19 OCT 2005

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Applicant's or agent's file reference BCS 03-5007 PCT	<b>FOR FURTHER ACTION</b> See Form PCT/PEA/416	
International application No. PCT/EP2004/012090	International filing date (day/month/year) 21.10.2004	Priority date (day/month/year) 24.10.2003
International Patent Classification (IPC) or national classification and IPC C08B30/12, C08B37/00, A23L1/09, A23L1/0522		
Applicant BAYER CROPSCIENCE GMBH		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand  07.07.2005	Date of completion of this report  18.10.2005	
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Smeets, D  Telephone No. +49 89 2399- 	

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/012090

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-26 as originally filed

**Claims, Numbers**

1-10 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	
	No: Claims	1-10
Inventive step (IS)	Yes: Claims	
	No: Claims	1-10
Industrial applicability (IA)	Yes: Claims	1-10
	No: Claims	

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
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**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

- D1: US 2003/094172 A1 (BENGIS HOLGER ET AL) 22 May 2003 (2003-05-22)
- D2: US 2003/004332 A1 (BAUERLEIN MICHAEL ET AL) 2 January 2003 (2003-01-02)
- D3: DE 198 60 375 A (AVENTIS RES & TECH GMBH & CO) 6 July 2000 (2000-07-06)

**Novelty - Article 33(1) and (2) PCT**

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-10 is not new in the sense of Article 33(2) PCT.

According to the description of the present application, page 5, lines 20, the invention relates to the fact that water-insoluble linear poly-alpha-1,4 glucans as described in D1-D3, are already resistant starches before being retrograded. However, a feature relating to the omission of the retrogradation step is not disclosed in any way in independent claim 1 on file. Therefore, D1-D3 anticipate the subject-matter of claims 1-9.

The subject-matter of claim 10 is already disclosed in tables 1-3 of D1. From said tables, it can be seen that resistant starch content of the starting material is already 58-65%.

Even with the restriction that the RS content should be at least 70%, the following remarks are made:

As the starting material described in D1 (tables) is identical to the water-insoluble linear poly-alpha-1,4 glucans of the present application (same preparation method), it is unclear why the resistant starch content of the glucans of the present application is higher. The only explanation would be that essential information about the preparation method of the linear poly-alpha-1,4 glucans of the present application is missing from the claims.

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**Inventive step - Article 33(1) and (3) PCT**

The question whether the application involves an inventive step is only of relevance once novelty of an independent claim has been established.